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Attorneys for Plaintiff Timothy Kualii Kahae

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA – San Francisco Division

TIMOTHY KUALII KAHAE,
an individual,

Plaintiff,

v.

HITACHI KOKI U.S.A., LTD.,
a Georgia Corporation, and
KOKI HOLDINGS CO., LTD.,
a Japanese Company,

Defendants.

Case No.:

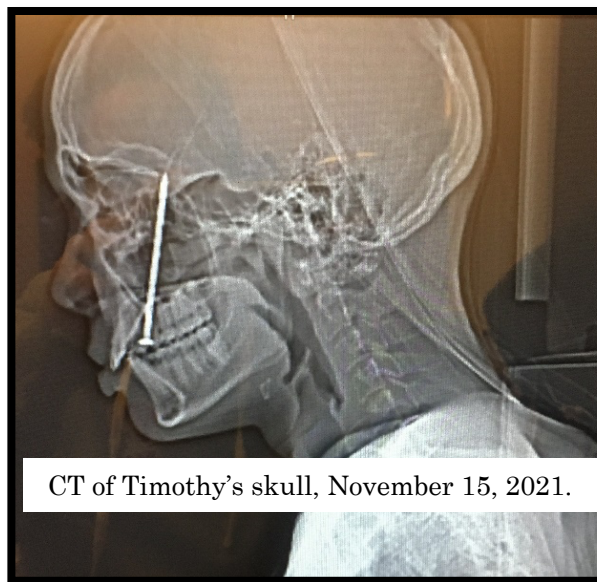
**COMPLAINT AND
DEMAND FOR JURY TRIAL**

1 Plaintiff, **TIMOTHY KUALII KAHAE** (hereafter referred to as
2 “Plaintiff” or “Timothy”), by and through his undersigned counsel, **JOHNSON**
3 **BECKER, PLLC** and **HARLAN LAW, P.C.**, hereby submits the following
4 Complaint and Demand for Jury Trial against Defendant **HITACHI KOKI**
5 **U.S.A., LTD.** (“Hitachi”) and Defendant **KOKI HOLDINGS CO., LTD** (“Koki
6 Holdings”) (collectively referred to as “Defendants”) and alleges the following
7 upon personal knowledge and belief, and investigation of counsel:

8 **NATURE OF THE CASE**

9 1. Defendants design, manufacture, market, import, distribute, and sell
10 power tools and hardware, including the subject “Hitachi Pneumatic Nailer,”
11 which specifically includes the Model Number NR83A (hereinafter referred to
12 as “nailer(s)”) that is at issue in this case.

13 2. On or about November 15, 2021, the subject nailer misfired during its
14 normal, foreseeable use, causing two nails to be shot at once and resulting in
15 the second nail ricocheting off the first nail and lodging itself in Timothy’s
16 tongue and head. As a result, Timothy sustained significant, life altering, oral
17 trauma and facial injuries.



1 3. On or about June 12, 2014, Defendants recalled¹ more than 25,000 nailers,
2 which, upon information and belief, includes the subject nailers, because “[t]he
3 pneumatic nailers can jam and override the safety switch that permits only one
4 nail to fire at a time, posing an injury risk.”² The recall was issued in
5 cooperation with the Consumer Products Safety Commission (CPSC).

6 4. Defendants manufactured these nailers, including the subject nailer,
7 with a defect that made them inherently dangerous to consumers, including
8 Timothy.

9 5. As a direct and proximate result of Defendants’ collective conduct, the
10 Plaintiff in this case incurred significant and painful bodily injuries, medical
11 expenses, physical pain, mental anguish, and diminished enjoyment of life.

12 6. Consequently, Plaintiff brings this case as a direct and proximate result
13 of the strict products liability and negligence of Defendants. Plaintiff also seeks
14 an award of punitive damages for Defendants’ deliberate disregard for the rights
15 or safety of others.

16 **PLAINTIFF TIMOTHY KUALII KAHAE**

17 7. Timothy is a resident and citizen of the City of San Francisco, County of
18 San Francisco, State of California and is 28 years old.

19 8. On or about November 15, 2021, Timothy suffered serious and substantial
20 oral trauma and facial injuries as the direct and proximate result of the nailer
21 jamming and overriding the safety switch, causing it to misfire two nails at once
22 during the normal, directed use of the nailer.

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27 ¹See <https://www.cpsc.gov/Recalls/2014/Hitachi-Koki-Recalls-Pneumatic-Nailers> (last accessed
28 November 2, 2023) A copy of the Safety Recall Report is attached hereto as Exhibit A.

² *Id.*

**DEFENDANTS HITACHI KOKI U.S.A., LTD. AND KOKI HOLDINGS
CO., LTD**

9. Defendants design, manufacture, market, import, distribute, and sell power tools and hardware, including the subject “Hitachi Pneumatic Nailer,” Model Number NR83A that is at issue in this case.

10. Defendant Hitachi is, and was at the time this action was commenced, a corporation existing under the laws of Delaware with its principal place of business located at 1111 Broadway Avenue, Braselton, GA, 30517, and does business in all 50 states. Defendant Hitachi is a corporate citizen of Delaware and Georgia. Defendant Hitachi may be served with process by servicing its registered agent, C T Corporation System, 289 S Culver Street, Lawrenceville, GA, 30046-4805.

11. At all times relevant, Defendant Hitachi substantially participated in the design, manufacture, marketing, distribution and sale of the subject nailer, which caused Plaintiff’s injuries and damages.

12. Defendant Koki Holdings is, and was at the time this action was commenced, a corporation existing under the laws of the Country of Japan with its principal place of business located at Shinagawa Intercity Tower A, 18th Floor, 15-1, Konan 2-chome, Minato-ku, Tokyo 108-6018, Japan, and does business in all 50 states. For purposes of determining diversity jurisdiction under § 1332(c)(1), Koki Holdings closely resembles a corporation formed under United States of America. Defendant Koki Holdings may be served via *the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters* (“Hague Service Convention”).

13. At all times relevant, Defendant Koki Holdings substantially participated in the design, manufacture, marketing, distribution, and sale of the subject nailer, which caused Plaintiff’s injuries and damages.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this case pursuant to diversity jurisdiction as prescribed by 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and there is complete diversity between the parties.

15. This Court has personal jurisdiction over this case and the Defendants in that Defendants regularly and persistently engage in the business of marketing distributing, advertising, and/or selling their products, including the subject nailer, in the state of California and for use by consumers in the State of California, and has transacted and conducted business within the State of California that relates to the allegations in this Complaint.

16. Defendant expected or should have expected its acts to have consequences within the State of California and derived substantial revenue from interstate commerce related to nailers, including the subject nailer, sold and used in the State of California.

17. Defendant purposefully availed itself of the privilege of conducting activities within the State of California, thus invoking the benefits and protections of its laws.

18. At all times relevant herein, Defendant conducted substantial business in California and purposely availed itself of the privilege of doing business in California by knowingly marketing, distributing, selling, and shipping products, including pneumatic nailers like the subject nailer, into California for sale to consumers in this state. Further, this action arises from Defendants' conduct directed toward California, arises from a tort committed in whole or in part within California, relates to Defendants' regular and persistent manufacture, supply, and sale of nailers, and resulted in injuries in California. Therefore, personal jurisdiction is proper as to the Defendants.

19. Jurisdiction over the Defendants is also proper under the due process

1 provisions of the California and United States constitutions. *See e.g. Ford Motor*
2 *Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017 (2021).

3 20. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because
4 Plaintiff was injured in the State of California, was treated by California
5 medical providers, and a substantial part of the events or omissions giving rise
6 to the claim occurred in the State of California.

7 21. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391 because
8 Defendants have sufficient minimum contacts with the State of California and
9 intentionally availed themselves of the markets within California through the
10 promotion, sale, marketing, and distribution of their products.

11 **FACTUAL BACKGROUND**

12 22. Defendants design, manufacture, market, import, distribute, and sell
13 power tools and hardware, including the subject nailer.

14 23. On or about November 15, 2021, Timothy began work. As an apprentice
15 carpenter at Plant Construction Company, L.P., it was his job to nail the
16 plywood on the floor down in 1 ½ inch increments.

17 24. At around 10 a.m., Timothy took a twenty-minute break before returning
18 to the fourth floor of the construction site to continue nailing down the plywood
19 on the floor. He turned the air compressor back on. Once the compressor was at
20 150-200 PSI, Timothy grabbed the nail gun and began nailing once more.

21 25. Timothy had nailed 75% of a sheet of plywood when the nail gun shot out
22 two nails at once; resulting in the second nail hitting the prior nail causing it to
23 ricochet off the nail and lodge itself through his tongue and into the base of
24 Timothy's skull.

25 26. Timothy went into shock and did not realize what happened; he laid the
26 gun on the ground and walked downstairs to report the incident, bleeding as he
27 went.

1 27. It became immediately apparent to his co-workers that Timothy required
2 professional medical treatment. He was taken to a Nearby Stanford Health
3 Clinic to receive emergency medical treatment.

4 28. Timothy was evaluated by both the ears, nose, and throat (“ENT”) and
5 neurosurgery department who determined that surgical intervention would be
6 required. Unfortunately, Timothy would have to wait until *the next day* to have
7 the nail removed.

8 29. Timothy would ultimately undergo surgery for: 1) the removal of nasal
9 foreign body; 2) repair to his tongue laceration; repair to his palate laceration;
10 3) a septoplasty; 4) a left maxillary antrostomy with tissue removal; 6) a left
11 total ethmoidectomy; 7) a left nasal floor free mucosal graft to repair anterior
12 skull base defect; and 8) a mandibular/maxillary fracture closed reduction.

13 30. As a result of the incident, Timothy incurred more than \$400,000.00 in
14 medical bills and almost \$30,000.00 in lost wages.

15 31. In addition, Timothy continues to experience numbness in his tongue
16 where the nail went through it, which has led to stuttering. Timothy also is
17 permanently scarred on his lower lip from the nail that the defective nail gun
18 shot into his head. These needless injuries will continue to plague Timothy for
19 the rest of his young life.

20 32. On or about June 12, 2014, Defendants recalled³ more than 25,000 nailers,
21 which includes the subject nailers, because “[t]he pneumatic nailers can jam and
22 override the safety switch that permits only one nail to fire at a time.”⁴

23 33. Plaintiff used the subject nailer for its intended purpose and did so in a
24 manner that was reasonable and foreseeable by Defendants.

25
26
27 _____
³See Exhibit A.

28 ⁴ *Id.*

1 34. Defendants' nailers possess defects that make them unreasonably
2 dangerous for their intended use by consumers because of their propensity to
3 jam and override the safety switch, causing two nails to fire at once; just as it
4 did to Timothy.

5 35. Defendants knew or should have known that their nailers possessed
6 defects that posed a safety risk to Plaintiff and the public. Nevertheless,
7 Defendants ignored and/or concealed their knowledge of the nailers' defects
8 from the general public and continued generating a substantial profit from the
9 sale of their nailers.

10 36. As a direct and proximate result of Defendants' concealment of such
11 defects, their failure to warn consumers of such defects, their failure to remove
12 a product with such defects from the stream of commerce, and their negligent
13 design of such products, Plaintiff used an unreasonably dangerous nailer, which
14 resulted in significant and painful bodily injuries.

15 37. Consequently, the Plaintiff in this case seeks damages, including punitive
16 damages, resulting from the use of Defendants' nailer as described above, which
17 has caused the Plaintiff to suffer from serious bodily injuries, medical expenses,
18 physical pain, mental anguish, diminished enjoyment of life, and other
19 damages.

20 **FIRST CAUSE OF ACTION**

21 **STRICT PRODUCTS LIABILITY**

22 PLAINTIFF, FOR A FIRST CAUSE OF ACTION AGAINST HITACHI
23 KOKI U.S.A., LTD. AND KOKI HOLDINGS CO., LTD., ALLEGES AS
24 FOLLOWS:

25 38. Plaintiff incorporates by reference each preceding and succeeding
26 paragraph as though set forth fully at length herein.

27 39. At the time of Plaintiff's injuries, Defendants' nailers were defective and
28 unreasonably dangerous for use by foreseeable consumers, including Plaintiff.

1 40. Defendants' nailers were in the same or substantially similar condition as
2 when they left the possession of the Defendant.

3 41. Plaintiff did not misuse or materially alter the nailer.

4 42. The nailers did not perform as safely as an ordinary consumer would have
5 expected them to perform when used in a reasonably foreseeable way.

6 43. Further, a reasonable person would conclude that the possibility and
7 seriousness of harm outweigh the burden or cost of making the nailers safe.
8 Specifically:

9 a. The nailers designed, manufactured, sold, and supplied by
10 Defendants were defectively designed and manufactured and placed
11 into the stream of commerce in a defective and unreasonably
12 dangerous condition for consumers;

13 b. The seriousness of the potential injuries resulting from the product
14 drastically outweighs any benefit that could be derived from its
15 normal, intended use;

16 c. Defendants failed to properly market, design, manufacture,
17 distribute, supply, and sell the nailers, despite having extensive
18 knowledge that the aforementioned injuries could and did occur;

19 d. Defendants failed to warn and place adequate warnings and
20 instructions on the nailers;

21 e. Defendant failed to adequately test the nailers; and

22 f. Defendant failed to market an economically feasible alternative
23 design, despite the existence of economical, safer alternatives, that
24 could have prevented the nailer from jamming and misfiring.

25 44. At the time of Plaintiff's injuries, Defendants' nailers were defective and
26 unreasonably dangerous for use by foreseeable consumers, including Plaintiff.

27 45. Defendants' actions and omissions were the direct and proximate cause of
28 the Plaintiff's injuries and damages.

1 **WHEREFORE**, Plaintiff demands judgment against Defendants for
2 damages, together with interest, costs of suit, and all such other relief as the
3 Court deems proper. Plaintiff reserves the right to amend the complaint to seek
4 punitive damages when evidence or facts supporting such allegations are
5 discovered.

6 **SECOND CAUSE OF ACTION**

7 **NEGLIGENT PRODUCTS LIABILITY**

8 PLAINTIFF, FOR A SECOND CAUSE OF ACTION AGAINST HITACHI
9 KOKI U.S.A., LTD. AND KOKI HOLDINGS CO., LTD., ALLEGES AS
10 FOLLOWS:

11 46. Plaintiff incorporates by reference each preceding and succeeding
12 paragraph as though set forth fully at length herein.

13 47. Defendants had a duty of reasonable care to design, manufacture, market,
14 and sell non-defective nailers that are reasonably safe for its intended uses by
15 consumers, such as Plaintiff.

16 48. Defendants failed to exercise ordinary care in the manufacture, sale,
17 warnings, quality assurance, quality control, distribution, advertising,
18 promotion, sale and marketing of their nailers in that Defendants knew or
19 should have known that said nailers created a high risk of unreasonable harm
20 to the Plaintiff and consumers alike.

21 49. Defendants were negligent in the design, manufacture, advertising,
22 warning, marketing and sale of their nailers in that, among other things, it:

23 a. The nailers designed, manufactured, sold, and supplied by
24 Defendants were defectively designed and placed into the stream of
25 commerce in a defective and unreasonably dangerous condition for
26 consumers;

27 b. The seriousness of the potential injuries resulting from the product
28 drastically outweigh any benefit that could be derived from its

1 normal, intended use;

2 c. Defendants failed to properly market, design, manufacture,
3 distribute, supply, and sell the nailers, despite having extensive
4 knowledge that the aforementioned injuries could and did occur;

5 d. Defendants failed to warn and place adequate warnings and
6 instructions on the nailers;

7 e. Defendants failed to adequately test the nailers;

8 f. Defendants failed to provide timely and adequate post-marketing
9 warnings and instructions after they knew the risk of injury posed
10 by their nailers; and

11 g. Defendant failed to market an economically feasible alternative
12 design, despite the existence of economical, safer alternatives, that
13 could have prevented Plaintiff's injuries and damages.

14 50. Despite the fact that Defendants knew or should have known that the
15 head of the nailers could unexpectedly detach, it continued to sell their nailers,
16 including the subject nailer, to consumers, including Plaintiff.

17 **WHEREFORE**, Plaintiff demands judgment against Defendants for
18 damages, together with interest, costs of suit, and all such other relief as the
19 Court deems proper. Plaintiff reserves the right to amend the complaint to seek
20 punitive damages when evidence or facts supporting such allegations are
21 discovered.

22 **THIRD CAUSE OF ACTION**

23 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

24 PLAINTIFF, FOR A THIRD CAUSE OF ACTION AGAINST HITACHI
25 KOKI U.S.A., LTD. AND KOKI HOLDINGS CO., LTD., ALLEGES AS
26 FOLLOWS:

27 51. Plaintiff incorporates by reference each preceding and succeeding
28 paragraph as though set forth fully at length herein.

1 52. At the time Defendants marketed, distributed, and sold their nailers to
2 Plaintiff in this case, Defendants warranted that their nailers were
3 merchantable and fit for the ordinary purposes for which they were intended.

4 53. Members of the consuming public, including consumers such as Plaintiff,
5 were intended third-party beneficiaries of the warranty.

6 54. Plaintiff reasonably relied on Defendants' representations that their
7 nailers were an effective and safe tool for nailing, and were equipped with a
8 "safety switch".

9 55. Defendants' nailers were not merchantable because they had the
10 propensity to lead to the serious personal injuries as described herein in this
11 Complaint.

12 56. Plaintiff used the nailer with the reasonable expectation that it was
13 properly designed and manufactured, free from defects of any kind, and that it
14 was safe for its intended, foreseeable use of nailing.

15 57. Defendants' breach of implied warranty of merchantability was the direct
16 and proximate cause of Plaintiff's injury and damages.

17 **WHEREFORE**, Plaintiff demands judgment against Defendants for and
18 punitive damages according to proof, together with interest, costs of suit,
19 attorneys' fees, and all such other relief as the Court deems proper. Plaintiff
20 reserves the right to amend the complaint to seek punitive damages if and when
21 evidence or facts supporting such allegations are discovered.

22 **FOURTH CAUSE OF ACTION**

23 **BREACH OF IMPLIED WARRANTY OF FITNESS FOR A**

24 **PARTICULAR PURPOSE**

25 PLAINTIFF, FOR A FOURTH CAUSE OF ACTION AGAINST HITACHI
26 KOKI U.S.A., LTD. AND KOKI HOLDINGS CO., LTD, ALLEGES AS
27 FOLLOWS:

28 58. Plaintiff incorporates by reference each preceding and succeeding

1 paragraph as though set forth fully at length herein.

2 59. Defendants manufactured, supplied, and sold their nailers with an
3 implied warranty that they were fit for the particular purpose of efficiently and
4 safely nailing materials.

5 60. Members of the consuming public, including consumers such as Plaintiff,
6 were the intended third-party beneficiaries of the warranty.

7 61. Defendants' nailers were not fit for the particular purpose as a safe means
8 of nailing, due to the unreasonable risks of bodily injury associated with its use.

9 62. Plaintiff reasonably relied on Defendants' representations that their
10 nailers were an effective and safe tool for nailing, and were equipped with a
11 "safety switch".

12 63. Defendants' breach of the implied warranty of fitness for a particular
13 purpose was the direct and proximate cause of Plaintiff's injuries and damages.

14 **WHEREFORE**, Plaintiff demands judgment against Defendant for and
15 punitive damages according to proof, together with interest, costs of suit,
16 attorneys' fees, and all such other relief as the Court deems proper. Plaintiff
17 reserves the right to amend the complaint to seek punitive damages.

18 **FIFTH CAUSE OF ACTION**

19 **BREACH OF EXPRESS WARRANTY**

20 PLAINTIFF, FOR A FIFTH CAUSE OF ACTION AGAINST HITACHI
21 KOKI U.S.A., LTD. AND KOKI HOLDINGS CO., LTD, ALLEGES AS
22 FOLLOWS:

23 64. Plaintiff incorporates by reference each preceding and succeeding
24 paragraph as though set forth fully at length herein.

25 65. Defendants designed, tested, manufactured, packaged, labeled, sold
26 and/or placed into the stream of commerce the nails, including the subject
27 nailer.

28 66. The nailers were defective and unreasonably dangerous at the time they

1 left the possession and control of the Defendants, and they were expected to
2 reach, and did reach, Plaintiff in substantially the same condition as they were
3 in at the time they were designed, tested, manufactured, packaged, labeled and
4 sold, and/or otherwise placed into the stream of commerce by the Defendants.

5 67. Defendants expressly represented and warranted in their promotional
6 literature, on the product box and in store that the nailers, including the subject
7 nailer, included a safety that would prevent the nailer from misfiring and/or
8 firing two nails at once.

9 68. The failure of the safety that Defendants represented and warranted the
10 nailer was equipped with support breached express warranties.

11 69. Defendants' breach of the express warranty was the direct and proximate
12 cause of Plaintiff's injuries and damages.

13 **WHEREFORE**, Plaintiff demands judgment against Defendant for and
14 punitive damages according to proof, together with interest, costs of suit,
15 attorneys' fees, and all such other relief as the Court deems proper. Plaintiff
16 reserves the right to amend the complaint to seek punitive damages.

17 **INJURIES & DAMAGES**

18 70. As a direct and proximate result of Defendants' collective negligence and
19 wrongful misconduct as described herein, Plaintiff has suffered and will
20 continue to suffer physical and emotional injuries and damages including past,
21 present, and future physical and emotional pain and suffering as a result of the
22 incident. Plaintiff is entitled to recover damages from Defendants for these
23 injuries in an amount which shall be proven at trial.

24 71. As a direct and proximate result of Defendants' collective negligence and
25 wrongful misconduct, as set forth herein, Plaintiff has incurred and will
26 continue to incur the loss of full enjoyment of life and disfigurement as a result
27 of the incident. Plaintiff is entitled to recover damages for loss of the full
28

1 enjoyment of life and disfigurement from Defendants in an amount to be proven
2 at trial.

3 72. As a direct and proximate cause of Defendants' collective negligence and
4 wrongful conduct, as set forth herein, Plaintiff has incurred medical treatment
5 expenses of over \$400,000.00 and will continue to incur expenses for medical
6 care and treatment, as well as other expenses, as a result of the injuries he
7 suffered as a result of the incident. Plaintiff is entitled to recover damages from
8 Defendants for his past, present and future medical and other expenses in an
9 amount which shall be proven at trial.

10 73. As a direct and proximate cause of Defendants' collective negligence and
11 wrongful conduct, as set forth herein, Plaintiff has incurred lost wages of almost
12 \$30,000.00 as a result of the injuries he suffered as a result of the incident.
13 Plaintiff is entitled to recover damages from Defendants for his past, present
14 and future wage loss and other expenses in an amount which shall be proven at
15 trial.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiff demands judgment against the Defendants as
18 follows:

- 19 A. That Plaintiff has a trial by jury on all of the claims and issues;
- 20 B. That judgment be entered in favor of the Plaintiff and against
21 Defendants on all of the aforementioned claims and issues;
- 22 C. That Plaintiff recover all damages against Defendants, general
23 damages and special damages, including economic and non-economic,
24 to compensate Plaintiff for his injuries and suffering sustained because
25 of the use of the Defendants' defective Nailer;
- 26 D. That all costs be taxed against Defendants;
- 27 E. That prejudgment interest be awarded according to proof;
- 28

1 F. That punitive and/or exemplary damages be awarded according to
2 proof;

3 G. That Plaintiff be awarded attorney's fees to the extent permissible
4 under Federal and California law; and

5 H. That this Court awards any other relief that it may deem equitable and
6 just, or that may be available under the law of another forum to the
7 extent the law of another forum is applied, including but not limited to
8 all reliefs prayed for in this Complaint and in the foregoing Prayer for
9 Relief.

10
11 **HARLAN LAW, P.C**

12 Dated: November 3, 2023

/s/ Jordon Harlan
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DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff demands a trial by jury of all the claims asserted in this Complaint so triable.

HARLAN LAW, P.C

Dated: November 3, 2023

/s/ Jordon Harlan
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